

## § 636.5

## 7 CFR Ch. VI (1–1–10 Edition)

(7) Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, verification of certifications, or other actions required to implement this Part;

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment;

(9) With regard to cost-share agreements with individual Indians or Indians represented by BIA, payments exceeding the payment limitation may be made to the Tribal participant if a BIA or Tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income related to conservation practice implementation.

(10) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income; and

(11) With regard to any person or legal entity that utilizes a unique identification number as an alternative to a tax identification number, the person or legal entity will utilize only that identifier for any and all other WHIP cost-share agreements to which the person or legal entity is party. Violators will be considered to have provided fraudulent representation and be subject to the full penalties of § 638.13 of this part.

(b) Eligible land includes:

(1) Private agricultural land;  
(2) Nonindustrial private forest land; and

(3) Indian land.

(c) Ineligible land. NRCS shall not provide cost-share assistance with respect to conservation practices on land:

(1) Enrolled in a program where fish and wildlife habitat objectives have been sufficiently achieved, as determined by NRCS;

(2) With on-site or off-site conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) On which habitat for threatened or endangered species, as defined in Section 3 of the Endangered Species Act (ESA), 16 U.S.C. 1532, would be adversely affected;

(4) That is public land.

[74 FR 2794, Jan. 16, 2009, as amended at 74 FR 10674, Mar. 12, 2009]

### § 636.5 National priorities.

(a) The following national priorities will be used in WHIP implementation:

(1) Promote the restoration of declining or important native fish and wildlife habitats;

(2) Protect, restore, develop, or enhance fish and wildlife habitat to benefit at-risk species;

(3) Reduce the impacts of invasive species on fish and wildlife habitats; and

(4) Protect, restore, develop, or enhance declining or important aquatic wildlife species' habitats.

(b) NRCS, with advice of other Federal agencies, will undertake periodic reviews of the national priorities and the effects of program delivery at the State and local level to adapt the program to address emerging resource issues. NRCS will:

(1) Use the national priorities to guide the allocation of WHIP funds to the State NRCS offices,

(2) Use the national priorities in conjunction with State and local priorities to assist with prioritization and selection of WHIP applications, and

(3) Periodically review and update the national priorities utilizing input from the public and affected stakeholders to ensure that the program

continues to address priority resource concerns.

**§ 636.6 Establishing priority for enrollment in WHIP.**

(a) NRCS, in consultation with Federal and state agencies and conservation partners, may identify priorities for enrollment in WHIP that will complement the goals and objectives of relevant fish and wildlife conservation initiatives at the state, regional, and national levels. In response to national, regional, and state fish and wildlife habitat concerns, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs.

(b) The State Conservationist, in consultation with the State Technical Committee, may give priority to WHIP projects that will address unique habitats, or special geographic areas identified in the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the fish and wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat concern of national, regional, or state importance;

(2) Relationship to any established wildlife or conservation priority areas;

(3) Duration of benefits to be obtained from the habitat development practices;

(4) Self-sustaining nature of the habitat development practices;

(5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;

(6) Estimated costs of fish and wildlife habitat development activities;

(7) Other factors determined appropriate by NRCS to meet the objectives of the program; and

(8) Willingness of the applicant to complete all conservation improvements during the first two years of the WHIP cost-share agreement.

**§ 636.7 Cost-share payments.**

(a) NRCS may share the cost with a participant for implementing the conservation practices as provided in the WPO that is a component of the WHIP cost-share agreement:

(1) Except as provided in paragraph (a)(2) of this section and § 636.9(c), NRCS shall offer to pay no more than 75 percent of the costs of establishing conservation practices to develop fish and wildlife habitat. The cost-share payment to a participant shall be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(2) Historically underserved producers, as defined in § 636.3, and Indian tribes may receive the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the estimated incurred costs associated with the conservation practice.

(b) Cost-share payments may be made only upon a determination by the NRCS that a conservation practice or an identifiable component of a conservation practice has been established in compliance with appropriate standards and specifications.

(c) Payments will not be made for a conservation practice that was:

(1) Applied prior to application for the program, or

(2) Initiated or implemented prior to cost-share agreement approval, unless a waiver was granted by the State Conservationist or designated conservationist prior to practice implementation.

(d) NRCS will identify and provide public notice of the conservation practices eligible for payment under the program.

(e) Cost-share payments may be made for the establishment and installation of additional eligible conservation practices, or the maintenance or replacement of an eligible conservation practice, but only if NRCS determines the conservation practice is needed to